

STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

AMENDED ORDER

IN THE MATTER OF	(COMPLAINT NO. 98-008
MISSION PEAK CONSTRUCTION, INC.,	(FOR
JOHN S. WONG, INC.,	(ADMINISTRATIVE
AND PEN DEVELOPMENT OF	(CIVIL LIABILITY
CALIFORNIA	(
DISCHARGE OF SEDIMENT TO	(
AGUA FRIA CREEK,	(
CITY OF FREMONT,	(
ALAMEDA COUNTY	(

YOU ARE HEREBY GIVEN NOTICE THAT:

1. You are alleged to have violated provisions of law for which the Regional Water Quality Control Board, San Francisco Bay Region (the Regional Board) may impose civil liability under Section 13385 of the California Water Code.
2. Unless waived, a hearing on this matter will be held before the Regional Board on May 20, 1998, at the BART Headquarters Building, Second Floor, located at 800 Madison Street in Oakland, California. You, or your representatives, will have the opportunity to be heard and to contest the allegations in this Complaint and the imposition of civil liability by the Regional Board. An agenda showing the time set for the hearing will be mailed to you not less than 10 days before the hearing date. You must submit copies of any written evidence concerning this Complaint to the Regional Board by May 6, 1998. Any written evidence not so submitted may not be considered by the Regional Board.
3. At the hearing, the Regional Board will consider whether to affirm, reject or modify the proposed administrative liability, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.

ALLEGATIONS

4. You are alleged to have violated waste discharge requirements contained in the General Permit, and discharge prohibitions of the Basin Plan, as described below.
5. On August 20, 1992, the State Water Resources Control Board adopted Order No. 92-08-DWQ, implementing National Pollution Discharge Elimination System (NPDES) General Permit No. CAS000002, Waste Discharge Requirements (WDRs) for Discharge of Storm Water Runoff Associated with Construction Activity (hereafter the General Permit).
6. Mission Peak Construction Inc., John S. Wong Inc., Pen Development of California, hereinafter the Dischargers, filed a Notice of Intent (NOI) with the State Board on

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February 22, 1993, under the name of the Mission Peak Company, to comply with the provisions of the General Permit, for their Avalon Homes Project. The WDID No. is 2-01S302016. The project site is located at the end of Green Valley Road, east of Highway I-680, in the City of Fremont, Alameda County. The total size of the project site is 250 acres. Approximately 70 acres were disturbed during the 1997/1998 rainy season and are subject to provisions of the General Permit.

7. Surface water drainage from the site is tributary to Agua Fria Creek and Torogas Creek which are tributaries to Coyote Creek and subsequently to San Francisco Bay, all Waters of the State. The existing beneficial uses of the water downstream of the site include cold freshwater habitat, ocean, commercial and sport fishing, estuarine habitat, industrial service supply, navigation, shellfish harvesting, fish spawning warm freshwater habitat, preservation of rare and endangered species, fish migration, wildlife habitat, contact recreation and non-contact recreation.
8. Provisions of the General Permit state, in part, the following:
 - [I] A.1 Discharges of material other than storm water, which are not otherwise regulated by a NPDES Permit, to a separate storm sewer system or waters of the nation are prohibited;
 - [II] A.2 Storm water discharge shall not cause or threaten to cause pollution, contamination, or nuisance;
 - [III] C.2 All Dischargers must develop and implement a Storm Water Pollution Prevention Plan in accordance with Section A: Storm Water Pollution Prevention Plan (SWPPP).
9. Section A of the General Permit defines the contents of a SWPPP to be a document which identifies methods to construct and implement storm water pollution prevention measures (control practices) to reduce pollutants in storm water discharges from the construction site. Item No. 6 of Section A - Erosion and Sediment Control, requires that the discharger revegetate disturbed areas as soon as feasible after grading and requires consideration of seeding, mulching, and stabilization. The General Permit states that at a minimum, the discharger must implement these practices on all areas during the rainy season.
10. The San Francisco Bay Basin Water Quality Control Plan (the Basin Plan), prohibits the discharge of silt, sand, clay, or other earthen materials from any activity in quantities sufficient to cause deleterious bottom deposits, turbidity or discoloration in surface waters or to unreasonably affect or threaten to affect beneficial uses (Table 4-1, Item No. 9).
11. The Dischargers did not adequately protect the site from erosion during the rainy season as required by the General Permit. Although some areas were treated with

grass seed (Hydroseed applied in October 1997), little or no plant growth had occurred by the time of the first significant rain event. Compounding that lack of erosion

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protection, sediment settling basins failed due to inadequate construction, resulting in the discharge of significant volumes of sediment to Agua Fria Creek.

12. On October 7, 1997, staff recognized that the site's SWPPP, as initially proposed, was inadequate and that site conditions violated the General Permit. Staff issued a Notice To Comply (NTC) to the project superintendent at the site, identifying areas of concern. This NTC recommended implementing additional erosion control measures and requested information on the design calculations for the site's sediment basins. The Dischargers responded to the NTC by providing construction details for the sediment basins. However, the Dischargers did not agree that additional erosion control measures were necessary and chose not to comply with the NTC.
13. From October 15, 1997, to January 15, 1998, the site experienced over twenty rain events greater than 0.25 inches per 24-hours. During one of these events, Regional Board staff sampled the site's storm water runoff which discharges to Agua Fria Creek. Upstream samples taken from Agua Fria Creek, in an undeveloped area, had Total Suspended Solids (TSS) concentrations of 150 ppm - within the typical background range. However, downstream samples from Agua Fria Creek, which receives runoff from the project site, had TSS concentrations greater than 7,000 ppm. Had appropriate erosion and sediment control measures been implemented, as required, significant reductions of pollutants discharged could have been achieved during this and other rain events.
14. A Notice of Violation letter (NOV), dated December 19, 1997, informed the Dischargers of site conditions which were in violation of the General Permit. The Dischargers' failure to comply with the General Permit issued pursuant to CWC Section 13377 constitutes a violation of the California Water Code for which this Regional Board may pursue civil liability against the Dischargers.
15. The Dischargers complied with the NOV by the middle of January 1998. The Dischargers installed correctly sized and constructed sediment basins, and implemented additional erosion and sediment control measures, as required in the NOV. These measures appear to have reduced stormwater sediment concentrations in Torogas and Agua Fria Creeks by an order of magnitude.
16. The Dischargers violated Waste Discharge Requirements (Section 13385.a.2, CWC), by failing to comply with the provisions and discharge prohibitions of the General Permit regulating discharges of storm water runoff associated with construction activity and violated the Basin Plan (Section 13385.a.4, CWC), by discharging sediment in prohibited quantities.
17. The extent of damage due to sediment discharged from the site to adjacent drainage ways, tributary to Agua Fria Creek and Torogas Creek, due to non compliance with the General Permit is difficult to assess; however, silt deposition in creeks, rivers and lakes can cause significant environmental damage. It is clear that discharges from this site have contributed to degradation of the above mentioned creeks. Further, these discharges could have been largely avoided had the Dischargers implemented Best

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Management Practices for erosion and sediment control earlier in the 1997/1998 rainy season.

18. This Complaint, Order No. 98-008, in assessing liability considers the Dischargers' history and the written and verbal warnings issued early in the rainy season requesting that the Dischargers correct deficiencies observed.

PROPOSED CIVIL LIABILITY

19. The maximum civil liability which could be imposed by the Regional Board in this matter is as follows:
 - a. Pursuant to Section 13385(c.1), \$10,000 per day of violation; and
 - b. Pursuant to Section 13385(c.2), up to \$10 per gallon for the volume discharged but not cleaned up, greater than 1,000 gallons.
20. In determining the amount of administrative civil liability, the Regional Board considered the following factors described in the attached staff report: " the nature, circumstances, extent, and gravity of the violation, and, with respect to the violator, the ability to pay, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require." [Water Code Section 13385(e)].
21. The Executive Officer of the Regional Board proposes that the administrative civil liability imposed by this Board be in the amount of \$47,000. This amount reflects the fact that the Dischargers initially violated the General Permit, resulting in sediment laden water discharges. However, they took appropriate steps by the month of January 1998 to comply with the General Permit, by implementing adequate erosion and sediment control measures. Therefore, the liability recommended is in the amount of \$47,000 which includes \$12,000 in staff costs.
22. The Dischargers have requested that \$35,000 of the above amount be suspended pending accomplishment of a supplemental environmental project acceptable to the Executive Officer. The Dischargers must submit to this Board a proposal for such a project by July 20, 1998. If the proposed project is not acceptable, the Dischargers have 30 days from receipt of notice of rejection of that submittal, to either submit a new or revised proposal or submit payment for the full amount suspended. The accepted project(s) must be completed by June 20, 1999. Any money not used by that date must be submitted to this Board and made payable to the State Cleanup and Abatement Fund or directed toward an alternative project acceptable to the Executive Officer.
23. Issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21000, et. seq.), in accordance with Section 15321(a)(2), Title 14, of the California Code of Regulations.

Date

Loretta K. Barsamian
Executive Officer

WAIVER OF HEARING

You may waive the right to a hearing. If you wish to waive the hearing, an authorized person must check and sign the waiver below and return it to the Regional Water Quality Control Board, San Francisco Bay Region, at 2101 Webster Street, Suite 500, Oakland, CA 94612. Payment of the civil liability would be due within 60 days from the date this Complaint was issued. Any waiver will not be effective until 30 days from the date this Complaint was issued to allow other interested persons to comment on this action. If you should have any questions, please contact Bruce H. Wolfe at (510) 286-0787 or the Regional Board Counsel at (916) 657-2421.

WAIVER

I By checking this box, I agree to waive my right to a hearing before the Regional Board with regard to the violations alleged in Complaint No. 98-008, and to remit payment for the civil liability imposed to include a proposal for supplemental environmental projects as mitigation for the amount of liability suspended. I understand that I am giving up my right to be heard, and to argue against the allegations made by the Executive Officer in this Complaint, and against the imposition of, or the amount of, civil liability proposed. I agree to remit payment for the civil liability imposed within 60 days from the date this Complaint was issued.

Date

Discharger